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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 11/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/727,593	Applicant(s) HASELTINE, FLORENCE P.	
	Examiner Rob Rhode	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 6 - 18, 21 - 24, 26 - 38, 41, 43 - 44, 46 - 58 and 61 - 96 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Continuation of Disposition of Claims: Claims pending in the application are 1, 3, 4, 6 - 18, 21 - 24, 26 - 38, 41, 43 - 44, 46 - 58 and 61 - 96 .

DETAILED ACTION

Response to Appeal

In view of the appeal brief filed on 8-11-05, PROSECUTION IS HEREBY REOPENED. New grounds for rejection are set forth below.

To avoid abandonment of the application, Applicant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Response to Amendment

Applicant amendment of 08-11-05 has been entered, which canceled claims 2, 5, 19 – 20, 22, 25, 39 - 40, 42, 45 and 59 - 60. In addition, the applicant traversed rejections of Claims 1, 3, 4, 6 – 18, 21 – 24, 26 – 38, 41, 43 – 44, 46 – 58 and 61 – 96 as well as submitted corrected drawings.

Currently, claims 1, 3, 4, 6 – 18, 21 – 24, 26 – 38, 41, 43 – 44, 46 – 58 and 61 - 96 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9, 29 and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In Claim 9 for example, the phrase "real time " is a relative phrase, which renders the claims indefinite. The phrase " real time " is not defined by the claim(s), the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. For examination purposes, the phrase "real time" will be treated as the ability to display information selected.

Claims 67, 71, 81 and 91 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In Claim 67 for example, the word "non verbal " is a relative word, which renders the claims indefinite. The word "nonverbal" is not defined by the claim(s), the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. For examination purposes the word "nonverbal" will be treated as information, which is stored and available for display.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 8, 10, 12, 19 – 28, 30, 32, 39 – 48, 50, 52, 59 – 64, 66 – 68, 71 – 72, 74 – 75, 77, 81, 82, 84 – 85, 87, 91, 92 and 94 - 95 are rejected under 35 U.S.C. 102(b) as anticipated by Harada (US 5,551,021).

Regarding claim 1 and related claims 21, 41, 67, 77 and 87, Harada teaches a method for providing a party accessing a merchant system with electronic access to an image of merchandise physically arranged according to a consumer, the method comprising: providing a consumer with access to physical merchandise at a merchant's physical premises (see at least Abstract, Col 8, lines 55 - 58 and Figure 13B); allowing the consumer to direct physical arrangement of the physical merchandise at the merchant's physical premises (see at least Col 8, lines 55 – 58 and Figure 13B); capturing an image of the physical merchandise as physically arranged at the merchant's physical premises according to the consumer (see at least Figures 1 and 13B); loading the captured image onto a merchant system (see at least Abstract, Col 2, lines 1 - 7 and Figure 1); providing a device with access to the merchant system (see at least Abstract, Col 5, line 63 and Col 6, lines 1 - 6 Figure 1, part 44 and 48 particularly); and

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enabling a party who is operating, the device to access and view the captured image (see at least Col 5, line 63, Col 6, lines 1 – 6, Col 14, lines 11 - 13 and Figures1).

Regarding claim 3 and related claims 23 and 43, Harada teaches a method, wherein the captured image includes one or more still photos (Figure 1 and 3).

Regarding claim 4 and related claims 24 and 44, Harada not specifically teaches a method, wherein the digital-captured image includes a video clip. Please note that the recitation “wherein the digital-captured image includes a video clip”, such recitation is given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other “captured image” already disclosed by Harada.

Regarding claim 6 and related claims 26, 46, 72, 82 and 92, Harada teaches a method, wherein the captured image reflects a relationship between the physical merchandise and the consumer (Figure 13B).

Regarding claim 7 and related claims 27 and 47, Harada teaches a method, wherein the physical merchandise includes at least one clothing garment and the image reflects the consumer wearing the clothing garment (Figure 13B).

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Regarding claim 8 and related claims 28 and 48, Harada teaches a method; wherein the physical merchandise includes at least one tool, and the image reflects the consumer operating the tool. Please note that the recitation, "wherein the physical merchandise includes at least one tool, and the image reflects the consumer operating the tool", such recitation is given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other "captured image" already disclosed by Harada.

Regarding claim 10 and related claims 30 and 50, Harada teaches a method, further comprising storing the captured image in the merchant system for later access by the device (Col 2, lines 21 – 23).

Regarding claim 61, Harada teaches a method, wherein allowing the consumer to direct physical arrangement of the physical merchandise comprises allowing the consumer to provide instructions to a third party regarding the physical arrangement of the physical merchandise (Col 3, lines 60 - 63, Col 6, lines 3 – 6, Col 8, lines 55 - 58 and Figure 13B and E).

Regarding claim 62, Harada teaches a method; wherein allowing the consumer to direct physical arrangement of the physical merchandise comprises allowing the consumer to physically interact with the physical merchandise (Col 3, lines 60 - 63, Col 6, lines 3 – 6, Col 8, lines 55 - 58 and Figure 13B).

Regarding claim 63, Harada teaches a method wherein capturing an image of the physical merchandise as physically arranged according to the consumer comprises capturing an image of the consumer physically interacting with the physical merchandise (Col 8, lines 55 – 58 and Figure 13B).

Regarding claim 64 and related claims 75, 85 and 95, Harada teaches a method wherein allowing the consumer to physically interact with the physical merchandise comprises allowing the consumer to wear the physical merchandise (Col 8, lines 55 – 58 and Figure 13B).

Regarding claim 65 and related claim 66, Harada teaches a method, wherein the consumer being allowed to direct physical arrangement of the physical merchandise comprises the consumer being allowed to physically interact with the physical merchandise, and wherein the capturing code segment comprises a code segment to capture an image of the consumer physically interacting with the physical merchandise (Figure 13 D).

Regarding claim 71 and related claims 81 and 91, Harada teaches a method, wherein the consumer-customized nonverbal information comprises physical merchandise physically arranged according by a consumer, the method further comprising: providing the consumer with the physical merchandise at a merchant's physical premises (Figure

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13B and E); and allowing the consumer to physically arrange the physical merchandise (Figure 13B).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 11, 13 – 18, 29, 31, 33 – 38, 49, 51, 53 – 58, 65, 69, 70, 73, 76, 78, 79, 80, 83, 86, 88, 89, 90, 93 and 96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harada (US 5,551,021) in view of Watanabe (US 6,578,072).

Harada substantially discloses and teaches the Applicant's invention.

However, Harada does not specifically disclose and teach method for viewing images in real time; a method, wherein enabling a party who is operating the device to access and view the captured image comprises authenticating the party and denying access by the device party is not authenticated properly; wherein the authenticating includes receiving authenticating information from the party and comparing the authenticating information with information provided by the consumer; a method, wherein enabling a party who is operating the device to access and view the captured image comprises using the Internet as a communication medium to transmit the captured images from the

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merchant; a method, further comprising receiving feedback from the party; wherein the feedback includes authorization for purchase of the physical merchandise; wherein the feedback includes a recommendation for purchase; a method wherein the consumer and party are a single entity; and a method, wherein the consumer and party are different entities.

On the other hand and in the same analogous art of capturing images in an imaging system and regarding claim 9 and related claims 29 and 49, Watanabe teaches a method, wherein the enabling a party who is operating the device to access and view the captured image comprises enabling the party who is operating the device to access and view the captured image in real time (Abstract, Col 2, lines 25 - 29 and Figures 1 and 2). Please note that Watanabe does not refer to real time but does address viewing captured images. However, the viewing of captured images and streaming video was old and well known at the time of the invention and used in Web cast. Therefore, it would have been obvious to one of ordinary skill to have provided the method of Watanabe with real time capability. In this manner, the individuals could have in real time allowed movement of the individual in order to view all sides or parts of the merchandise. In this manner, the customer's satisfaction will be increased with the added capability of movement and thereby would have increased the probability that they will return for additional shopping in the future.

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Regarding claim 11 and related claims 31, 51, 73, 83 and 93, Watanabe teaches a method, wherein enabling a party who is operating the device to access and view the captured image comprises authenticating the party and denying access by the device party is not authenticated properly (Col 1, lines 25 – 37) and [12 and related claims 32, 52, 74, 84 and 94] wherein the authenticating includes receiving authenticating information from the party and comparing the authenticating information with information provided by the consumer (Col 1, lines 34 – 37).

Regarding claim 13 and related claims 33 and 53, Watanabe teaches a method, wherein enabling a party who is operating the device to access and view the captured image comprises using the Internet as a communication medium to transmit the captured images from the merchant (Figures 1, 2 and 6).

Regarding claim 14 and related claims 34, 54, 70, 76, 80, 86, 90 and 96, Watanabe teaches a method, further comprising receiving feedback from the party (Figure 8) and [15 and related claims 35, 55, 68, 78 and 88], Watanabe teaches a method, wherein the feedback includes authorization for purchase of the physical merchandise and [16 and related claims 36, 56, 69, 79 and 89] wherein the feedback includes a recommendation for purchase (Figure 8). Please note that recitations “wherein the feedback includes authorization for purchase of the physical merchandise” and “wherein the feedback includes a recommendation for purchase”, such recitation are given little patentable weight because it imparts no structural or functional specificity which serves to

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patentably distinguish the instant invention from the other "feedback" already disclosed by Watanabe.

Regarding claim 17 and related claims 37 and 57, Watanabe teaches a method wherein the consumer and party are a single entity (Abstract).

Regarding claim 18 and related claims 38 and 58, Watanabe teaches a method, wherein the consumer and party are different entities (Abstract).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the method, medium and apparatus of Harada with the method, medium and apparatus of Watanabe for providing a device with access to the merchant system with electronic access to an image of merchandise physically arranged according to a consumer, the method comprising: providing a consumer with access to physical merchandise at a merchant's physical premises; allowing the consumer to direct physical arrangement of the physical merchandise at the merchant's physical premises; capturing an image of the physical merchandise as physically arranged at the merchant's physical premises according to the consumer; loading the captured image onto a merchant system; providing a device with access to the merchant system; and enabling a party who is operating, the device to access and view the captured image – in order to provide the consumer with the ability to try on clothes, have image captured and stored for reference. Harada discloses method, medium and apparatus a merchant

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method and system, which discloses capturing of an image, loading a captured image and allowing a device access and viewing of captured images (see at least Abstract, Col 5, line 63 and Col 6, lines 1 – 6, Col 14, lines 11 – 14, Col 15, lines 50 - 54 and Figure 1, part 44 and 48). Watanabe in turn discloses a method, medium and apparatus to remotely access and to view captured images' (see at least Abstract and Figures 1 - 8). Therefore, one of ordinary skill in the art would have been motivated to combine Harada with Watanabe in order to have a method, medium and apparatus disclosing the capturing of an image of a consumer with tried on merchandise, loading the captured image and allowing device both local and remote access and viewing of captured images. In this manner, the consumer as well as others can view the captured image of the consumer. Thereby, the method and system will allow feedback from other parties that the consumer values and thereby ensure that the nonverbal information is the best suited for them as well as storing for future reference and approval if required. Moreover, this online collaboration will ensure that the purchase is most appropriate and thereby increase the consumer's satisfaction with the purchase. In turn, the increased satisfaction of the consumer will increase the probability that they will return for additional purchases as well as recommend the site/store to others.

Response to Arguments

Applicant's arguments with respect to claims 1, 3, 4, 6 – 18, 21 – 24, 26 – 38, 41, 43 – 44, 46 – 58 and 61 - 96 have been considered but are moot in view of the new ground(s) of rejection.

Applicant that that the captured images of Harada are kept secret from the customer and thereby the Examiner could only use the Applicant's disclosure to provide a motivation to combine Harada and Watanabe.

First, the Applicant does not argue that Harada teaches the claim limitations of "providing; allowing; capturing; and loading" or the "arranging of physical merchandise" as recited in claim 1 and 67 and only argues that captured images are kept secret from the customer. Second and with respect to the Applicant's arguments regarding Harada keeping the captured and stored images of and for example, the customer's "ready made" clothes secret from customers and thereby having these available only for store employees in a customer management system is just not correct. For example, Harada discloses and teaches that that there are three (3) embodiments of the invention and they are B, C and D (Figure 13A and B). While the Applicant focus only on embodiment D, the other embodiments and particularly embodiment B (ready made) of Harada would fairly suggest and teach one of ordinary skill that these images are not kept secret from the customer and as importantly suggest that captured images are both sent to the customer's remote address. In that regard, Harada discloses and would fairly suggest that stored images of specific apparel of interest such as "ready made" for these customer's individually are incorporated in and sent to them in a tailored Direct Mail campaign (Col 7, lines 36 – 39 and Col 8, lines 26 – 33). These tailored Direct Mail campaigns are known to one of ordinary skill in the art would have included not only

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photographs of "ready made" merchandise of interest to the customer individually and also some short written portion indicating a sale for these items, which the customer bought or displayed an interest in previously. Moreover, it is reasonable that the customer would solicit feedback and provide feedback too for the images of "ready made" clothes with others prior to returning to the store for shopping provided (Col 6, lines 1 – 6 and Figure 1). Once the customer enters the shop as result of the Direct Mail campaign, they are requested to input their ID number in the attach keyboard of computer system (Col 8, lines 34 – 59). In turn, the customer supplies the clerk with an ID card at the desk or the customer inputs the ID into the attached keyboard of the CRT (Col 5, lines 26 – 43 and Figure 3), which would at the moment of displaying the results of the customer input and hitting the return key would reveal very clearly to them that the information and stored images of their face and ready made cloths are not secret. Thereby, the customer entering their ID number into the keyboard could not help but see the results returned to the attached CRT including their face and associated information (Col 5, lines 44 - 48). Moreover, it is reasonable that the attendant would take control at that point and review the customer's other stored images of past purchases of for example "ready made" clothes physically arranged by the customer to ensure the customer is properly attended (Col 6, lines 11 – 17, Col 8, line 41 and Figures 1 - 3) - and would not rudely push or shoulder the customer out of the way to keep them from seeing the returned information and images of their face and "ready made" apparel previously purchased (Col 4, lines 32 – 57, Col 8, lines 50 - 52 and Figures 2 – 4) . Thereby, the customer is made very aware of and understands more

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fully why this store is able to tailor their Direct Mail campaigns and shopping experience to them specifically for ready made clothes, which will increase the probability that the customer will return in the future as well as being more receptive to suggested accessories.

The Applicant argues that there is no suggestion to combine the references because the Applicant's own disclosure was used to provide the motivation to combine. In that regard, the examiner recognizes that combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion can only establish obviousness, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the problem to be solved is the providing access to images and providing a capability for feedback. For example and in this case, Harada does suggest to one of ordinary skill that photographs/images are not kept secret from the customer and these capture images can and are transferred electronically (i.e. transmitted) as well as received (Col 14, lines 1 - 14 and Figures 1, part 44 and 48 and 22A - B). Moreover, Harada does disclose that feedback can be obtained (Col 5, line 63 and Col 6, lines 1 - 6). Additionally, Harada teaches that these images can be transmitted via an External I/O Unit (Figure 1, label part 44). Furthermore, Harada discloses and teaches that the method and system can be used in any system, which handles images (Col 15, lines 50 - 52). In that regard and in the same area of system which handles images, Watanabe a internet connected image

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sharing method and system provides the comparability for a soliciting feedback on stored images as well as receiving feedback on the these images from a remote party (see at least Abstract, Col 4, lines 4 – 9, Col 9, lines 55 – 67 and Figures 1 and 8). Therefore, one of ordinary skill in the art would have been motivated to extend the method and system of Harada with the a method and system for soliciting feedback from a party regarding the stored images of Harada and receiving feedback from the party on these images. In this manner, a more collaborative sharing and feedback capability is provided, which will benefit both the customer/party and the store.

At pages 6 – 9 Applicant argues in part A and B that Harada (1) keeps the stored images secret from the customer, (2) implies that claim recitations such as claim 1 teach a customer “trying on” clothes (page 7) and (3) that the CD - ROM is not transferring images to a remote location.

First with regard to keeping the images secret from the customer, the response to this argument is provided above. Second, the claims such as claim 1 do not recite a customer “trying on” clothes. Rather, the claims such as claim 1 recite, “allowing the consumer to direct physical arrangement of the physical merchandise at the merchant’s physical premises”, which in a reasonably broad interpretation includes a consumer simply arranging their choices of the “ready made” merchandise/clothes. Third, and regarding the CD – ROM, it is well known to one of ordinary skill that a CD-ROM in and of itself does not transmit. Rather, the CR-ROM is used for storing and retrieving of

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information/images, which are extracted from the CD and transmitted by the software associated with a computer (i.e. PC).

At pages 9 –11 and referring to claims the Applicant argues that Watanabe teaches purchase of a photograph, not physical merchandise shown in a digital photograph/image.

First it is important to note that these dependent claims depend from a claim (s) (14 as an example), which recites “the method, further comprising receiving feedback from the party”. In that regard and noted above, Watanabe fairly suggest and teaches this limitation (Figure 8). In turn, claim 15 as an example and which depends from claim 14, the Final Rejection stated at page 9; “Please note that recitations “wherein the feedback includes authorization for purchase of the physical merchandise” and “wherein the feedback includes a recommendation for purchase”, such recitation are given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other “feedback” already disclosed by Watanabe. Moreover, the claim language is so broad that it can be read to include feedback one provides to approve a purchase such as clicking on an order button or the party approving the purchase via telephone.

At page 11, the applicant has requested documentary evidence regarding online collaboration.

In response, the Examiner offers the following references, which teach online collaboration in a sales situation and these include – Anupam (US 5,862,330) including Abstract and Col 5, lines 14 – 35 and "ActiveTouch Launches WebEx Meeting Center: The First Application Service for Web-Based Multimedia Collaborative Meetings; Business Editors & Technology Writers; Business Wire; New York; Jul 12, 1999.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Rob Rhode** whose telephone number is **571.272.6761**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **571.272.7159**.

Any response to this action should be mailed to:

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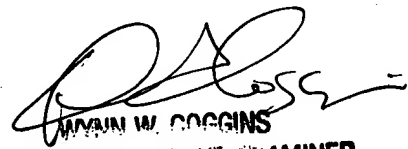
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